

ELLIS LLP LAWHORNE

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July 22, 2004

VIA ELECTRONIC MAIL SERVICE AND HAND DELIVERY

The Honorable Bruce Duke
Executive Director
South Carolina Public Service Commission
PO Drawer 11649
Columbia SC 29211

RE: Complaint of TC Systems, Inc. against BellSouth Telecommunications, Inc.
Docket No. 2004-118, Our File No. 611-10226

Dear Mr. Duke:

Enclosed is the original and ten (10) copies of the **Motion for Summary Judgment and Memorandum in Support of Summary Judgment** filed on behalf of TC Systems, Inc. in the above-referenced docket. Below is a proposed schedule that TC Systems and BellSouth have both agreed to. I have also discussed this issue with David Butler, and he indicated to me that the Advocacy Staff did not have a problem with this schedule.

If this proposed schedule is agreeable to the Commission Staff, please issue a scheduling letter memorializing the two dates for response and reply.

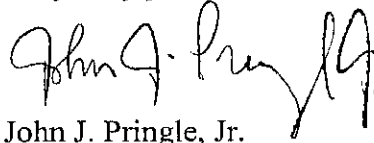
Monday August 9th - BellSouth (and possibly the Commission Staff) file their response and any cross, counter, or responsive motions;

Monday August 16th- TC Systems files any reply/rebuttal arguments.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it via the person delivering same.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,



John J. Pringle, Jr.

JJP/cr

cc: Gene Coker, Esquire
all parties of record

Enclosures

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

In the matter of)	
Complaint of TC Systems, Inc. against)	
BellSouth Telecommunications, Inc.)	
for Failure to Comply with)	DOCKET NO. 2004-118-C
47 U.S.C. § 252(i), Petition for)	
Approval of § 252(i) Adoption of Existing)	
Interconnection Agreement, and Request)	
for Expedited Proceedings)	

TC SYSTEMS, INC'S MOTION FOR SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

NOW COMES TC Systems, Inc. ("TCS"), pursuant to Rule 56 of the S.C. Rules of Civil Procedure and S.C. Code Ann. Regs. 103-840 of the S.C. Public Service Commission Regulations, and requests that the Public Service Commission of South Carolina (the "Commission") grant its Motion for Summary Judgment, based on the clear meaning of Section 252(i) of the Telecommunications Act of 1996 (the "Act"). Summary disposition of this complaint is appropriate because there is no genuine issue as to any material fact and TCS is entitled to judgment as a matter of law. For the reasons stated herein, and those in TCS's Complaint, the Commission should (1) compel BellSouth Telecommunications, Inc. ("BellSouth") to comply with its obligations under sections 251 and 252 of the Act; (2) approve TCS's adoption of the interconnection agreement ("ICA") between BellSouth and AT&T Communications of the Southern States, LLC ("AT&T"); and (3) issue an order requiring BellSouth to execute the Adoption Agreement ("Adoption Agreement"). The Affidavit of Billy C. Peacock is filed as Exhibit A in support of this Motion, and the Adoption Agreement is attached to the Affidavit as Exhibit 1.

I. UNDISPUTED FACTUAL BACKGROUND

No genuine issue of material fact exists in this dispute. TCS has requested to opt into an existing Commission-approved ICA, the BellSouth/AT&T ICA, pursuant to section 252(i) of the Telecommunications Act. BellSouth has denied this request, but has not cited any reason for its denial that is based on either the Act or the rules of the Federal Communications Commission (“FCC”). (Affidavit of Billy C. Peacock ¶¶ 4-13, attached as Exhibit A (“Peacock Aff.”).)

On February 25, 2004 TCS notified BellSouth that TCS elected to take service pursuant to all terms and conditions of the existing Master Interconnection and Resale Agreement between BellSouth and AT&T, approved by the Commission effective December 21, 2001, for the remaining term of that Agreement. The BellSouth/AT&T Agreement terminates December 20, 2004. (Id. ¶ 6.)

At the time of TCS’s request, AT&T and BellSouth were negotiating changes to the BellSouth/AT&T Agreement based on the Triennial Review Order (“TRO”) released by the FCC on August 21, 2003. These negotiations do not affect the vitality of the opt-in provisions under Section 252(i) or the applicability of these provisions to TCS. (Id. ¶ 7.)

BellSouth did not respond to TCS’s request until after the D.C. Circuit issued its decision in *United States Telecom. Ass’n v. FCC*.¹ On March 8, 2004 BellSouth notified TCS that the BellSouth/AT&T Agreement was not available for adoption. BellSouth’s stated reason was that the agreement TCS requested “is not compliant with current law, and therefore, is not available for adoption.” (Id. ¶ 8.)

¹ 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”).

On March 10, 2004 TCS responded to BellSouth's denial of the opt-in request. TCS notified BellSouth that BellSouth's position was unsupported by the Act or FCC rules, and was contrary to the purpose underlying the opt-in provisions in the Act. (Id. ¶ 9.)

On March 18, 2004 BellSouth again denied TCS's opt-in request. BellSouth denied that it had refused to allow TCS to adopt the BellSouth/AT&T Agreement, but BellSouth advised TCS that the Agreement could not be adopted without replacing the Unbundled Network Element (UNE) Attachment with the BellSouth Standard UNE Attachment. BellSouth maintained that the BellSouth Standard UNE Attachment should be the operative agreement while negotiations regarding TRO-compliant language are ongoing. (Id. ¶ 10.)

On March 29, 2004 TCS responded, advising BellSouth that its position was both unacceptable and potentially anti-competitive. In a spirit of compromise, TCS offered to condition the opt-in on an obligation to incorporate fully into the agreement the results of the ongoing TRO amendment negotiations. (Id. ¶ 11.)

On April 2, 2004 BellSouth refused to accept TCS's compromise. Instead, BellSouth reiterated its refusal to allow TCS to opt-in to the existing, Commission-approved, BellSouth/AT&T Agreement. (Id. ¶ 12.)

BellSouth has offered no acceptable justification for its refusal of TCS's opt-in request. (Id. ¶ 13.)

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Cafe Assoc., Ltd. v. Gerngross*, 406 S.E. 2d 162 (S.C. 1991). The use of the summary judgment procedure allows for the just, speedy and inexpensive determination of actions. The motion for summary judgment can be accompanied by supporting affidavits, made on personal knowledge. S.C.R.C.P. 56(e). TCS

and BellSouth agree on the operative, material facts and only legal issues remain for the Commission to determine.

III. SUMMARY OF ARGUMENT

The Commission should order that BellSouth grant TCS's opt-in request, in accordance with the plain language of the Act and the FCC's rules implementing the Act. BellSouth's denial of TCS's request has no basis in the Act or the FCC's rules. Rather, BellSouth relies solely on its contention that there has been a change in the law because of the TRO and the D.C. Circuit's decision in *USTA II*, and this change of law has somehow rendered the ICA "unavailable."

BellSouth's position is untenable. There is no statutory or rule-based exception to TCS's right to opt into the agreement. BellSouth cannot place any conditions on its opt-in obligations beyond those stated in the Act and the rules. BellSouth cannot amend federal law based on its unilateral determination that its unbundling obligations have changed.

Furthermore, BellSouth is premature in raising change-of-law concerns; this early action is an attempt to force TCS to waive rights it should obtain in adopting the ICA. BellSouth would have the adoption of the ICA conditioned on TCS's modification of that agreement. To do so obviates the obligation to allow CLECs to opt into existing ICAs. Instead, the Commission should allow TCS to adopt the existing ICA and preserve the rights of both parties to properly negotiate an amendment to the agreement *after* the ICA is adopted.² BellSouth's actions, which contradict the plain language of the Act and the FCC rules, serve only to obstruct TCS's ability to enter the market and further BellSouth's anti-competitive goals.

² Indeed, in the spirit of compromise, TCS has already offered to abide by the result of the BellSouth/AT&T amendment negotiations, which are currently ongoing. (Peacock Aff., Ex. 6 (March 29, 2004 Letter from TCS to BellSouth).)

IV. ARGUMENT

A. Under the Express Language of the Act and the FCC's Rules, BellSouth Must Allow TCS to Opt-In to the ICA

BellSouth must grant TCS's opt-in request under the plain language of the Act and the FCC's rules. Section 252(i) of the Act provides that:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The FCC's rules implementing the Act state, in pertinent part, that:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement...

47 C.F.R. § 51.809(a).

These provisions unequivocally require that BellSouth grant TCS's opt-in request because: (1) BellSouth is an "incumbent LEC"; (2) TCS is a "requesting telecommunications carrier"; and (3) the AT&T/BellSouth ICA is an "agreement to which [BellSouth] is a party that is approved by a state commission pursuant to section 252 of the Act." BellSouth's denial contradicts the plain meaning of the rules.

BellSouth's purported reason for denying TCS's request is entirely inconsistent with this straightforward language in the Act and the FCC's rules. By arguing that the ICA "is not compliant with current law, and therefore, is not available for adoption," BellSouth is unilaterally attempting to avoid its federally mandated obligation to allow CLECs to opt into existing ICAs by attaching unauthorized conditions for CLECs to meet. (Peacock Aff., Ex. 3 (March 8, 2004

Letter from BellSouth to TCS).) Indeed, BellSouth cites no legal support for its position, but instead simply argues that, under the circumstances, its position is “reasonable.” (Peacock Aff., Ex. 5 (March 18, 2004 Letter from BellSouth to TCS).) At best, BellSouth’s argument is a misinterpretation of a straightforward statute and rule. At worst, it is a deliberate attempt to obstruct TCS’s ability to offer services in the South Carolina market.

Because TCS does not seek to “pick and choose” particular provisions of the ICA, but rather seeks to adopt the ICA in its entirety, TCS’s request is unaffected by the FCC’s recent rejection of the former “pick and choose” rule under section 252(i) of the Act.³ However, this recent FCC decision reaffirms that BellSouth is required to allow, and TCS is required to adopt, *all* the rates, terms and conditions of the ICA in their entirety. The FCC states that “all terms and conditions of the agreement, to the extent that they apply to interconnection, services, or network elements, must be included within an agreement available for adoption in its entirety under section 252(i).”⁴ Similarly, TCS, as the requesting carrier must “adopt the agreement in its entirety, taking all rates, terms and conditions from the adopted agreement.”⁵ The FCC states that it would “deem an incumbent LEC’s conduct to be discriminatory if it denied a requesting carrier’s request to adopt an agreement to which it is entitled under section 252(i) and our all-or-nothing rule.”⁶

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, FCC 04-164, rel. July 13, 2004.

⁴ *Id.*, para. 30, n.105.

⁵ *Id.*, para. 1.

⁶ *Id.*, para. 29.

B. None of the Statutory or Rule-Based Exceptions to TCS's Opt-In Rights Are Applicable

Although the FCC's rules allow limited bases for the lawful denial by an ILEC of a CLEC's opt-in request, no such bases exist—nor does BellSouth allege they exist—in the present dispute.⁷ Instead, BellSouth relies on the suggestion in the FCC rules that an ICA may be available for adoption only “for a reasonable period of time” after it is effective.⁸

TCS made its request within a “reasonable period of time” after the ICA was available for public inspection. BellSouth cites the FCC ISP Order⁹ for the proposition that a change in the law may result in the expiration of “reasonable period of time.” (Answer at 7-8.) The ISP Order adopted a different compensation regime for ISP-bound traffic governed by section 201 of the Act rather than section 252, and therefore found that section 252(i) opt in requirements no longer applied to this traffic. The order did not affect agreements like the ICA that remain subject to section 252. Moreover, the ISP Order also is inapplicable here because the D.C. Circuit's decision did not determinatively change the law. BellSouth's argument assumes the TRO alone imposed its unbundling obligations. It did not. BellSouth's unbundling obligations stem directly from the Act itself and relevant State law, and are implemented in a Commission-approved ICA. The *USTA II* decision did not remove these obligations or prohibit BellSouth from providing unbundled network elements as reflected in the UNE attachment.

In any event, even if *USTA II* did announce some change to the law, TCS should not be forced to concede to BellSouth's version of the law as a precondition to entering the market.

⁷ See 47 C.F.R. 51.809(b).

⁸ 47 C.F.R. 51.809(c).

⁹ Order On Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, 16 FCC Red 9151 (April 18, 2001) (“ISP Order”).

BellSouth's approach requires TCS either to accept BellSouth's unilateral determination of the unbundling obligations the law requires or operate without an ICA and be unable to serve customers in South Carolina. It is entirely unfair to follow this approach, especially when the ICA contemplates changes in the law, contains specific provisions for addressing such changes, and TCS has agreed to incorporate the results of such a process in the agreement at the appropriate time.

C. Only After Fulfilling its Opt-In Obligations May BellSouth Properly Request That TCS Negotiate TRO Amendment Language

Under the Act, the rules, and the terms of the ICA, the Commission should properly consider BellSouth's contention that the ICA is not compliant with the current law in a separate proceeding *after* TCS opts into the ICA. The Commission should allow the parties to address any change of law pursuant to the procedures outlined in the ICA.

Of course, following TCS's adoption of the ICA, BellSouth reserves its rights to invoke the "change-of-law" provisions in the ICA. These provisions are specifically designed to remedy the complaint BellSouth prematurely raises here—that a change in the law has altered BellSouth's obligations under the ICA. Under the terms of the ICA, BellSouth could then initiate negotiations and amendment proceedings. This would be the appropriate method of determining what, if any, change of law has taken place, and what effect any change of law will have on the obligations of the parties.¹⁰

In fact, TCS has made a good-faith offer to alleviate BellSouth's concerns regarding any change of law. TCS agreed to fully incorporate into the TCS/BellSouth ICA the results of the

¹⁰ It is TCS's position that BellSouth's unbundling obligations are not solely based on the TRO, and therefore these obligations remain in effect even post-*USTA II*. BellSouth cannot force TCS to waive this argument in order to gain access to the market.

ongoing AT&T/BellSouth TRO amendment negotiations. (Peacock Aff., Ex. 6 (March 29, 2004 Letter from TCS to BellSouth).) BellSouth's continued denial of TCS's adoption request, despite this concession, is evidence of its intent to simply stall this proceeding and obstruct TCS's ability to serve its customers.

Moreover, BellSouth has no authority to determine unilaterally that the ICA is not compliant with the law. To the extent there has been any change of law, BellSouth's post-*USTA II* unbundling obligations should be determined via the "change of law" provisions in the ICA. This approach is consistent with the Act and the FCC's rules, which place no such condition upon BellSouth's opt-in obligations. BellSouth cannot determine that, because BellSouth believes its unbundling obligations have changed, the ICA is therefore "unavailable" for adoption—no matter how "reasonable" such a position may seem to BellSouth.

V. CONCLUSION

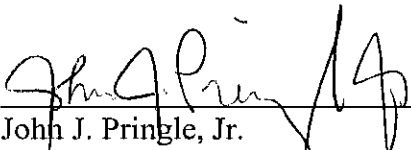
BellSouth cannot require TCS to modify the ICA as a condition precedent to TCS's adoption of the ICA. The statute and the rules are clear—TCS is entitled to the same terms and conditions in the valid, Commission-approved AT&T/BellSouth ICA, without modification. An intervening decision, such as *USTA II*, cannot be a legitimate basis for shortening the ICA's term of availability for adoption. BellSouth must raise its change-of-law arguments pursuant to the applicable change-of-law provisions in the ICA *after* TCS adopts the agreement. Indeed, BellSouth undoubtedly will do so in negotiations and potential litigation with AT&T. TCS has already agreed to be bound by the outcome of those negotiations and proceedings. Accordingly, BellSouth has no valid basis for denying TCS's adoption request. BellSouth is simply trying to deny its competitors access to the market.

PRAYER FOR RELIEF

WHEREFORE, TCS prays that the Commission:

- (a) grant expedited treatment to this proceeding; and
- (b) compel BellSouth to comply with its obligations under 47 U.S.C. §§ 251 and 252 and 47 C.F.R. § 51.809(a); and
- (c) require BellSouth to execute the Adoption Agreement attached as Exhibit 1 to the Affidavit of Billy C. Peacock; and
- (d) approve TCS's § 252(i) adoption of the interconnection agreement between BellSouth and AT&T dated December 21, 2001; and
- (e) grant such other and further relief as the Commission may deem appropriate.

Respectfully submitted this 22nd day of July, 2004.



John J. Pringle, Jr.
ELLIS, LAWHORNE & SIMS, P.A.
PO Box 2285
Columbia, SC 29202
Telephone: (803) 343-1270

Exhibit A

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

In the matter of)	
Complaint of TC Systems, Inc. against)	
BellSouth Telecommunications, Inc.)	
for Failure to Comply with)	DOCKET NO. 2004-118-C
47 U.S.C. § 252(i), Petition for)	
Approval of § 252(i) Adoption of Existing)	
Interconnection Agreement, and Request)	
for Expedited Proceedings)	

AFFIDAVIT OF BILLY C. PEACOCK

Billy C. Peacock on oath deposes and states the following on personal knowledge:

1. I am the Director of Local Services & Access Management for TC Systems, Inc. ("TCS") and AT&T Communications of the Southern States, LLC ("AT&T"). I am over 18 years of age and am competent to make this Affidavit. The facts contained herein are true and correct within my personal knowledge.

2. TCS was organized under the laws of the State of Delaware on September 20, 1989. TCS is an indirect, wholly-owned subsidiary of AT&T Corp. and an affiliate of AT&T Communications of the Southern States, LLC.

3. TCS and BellSouth have never entered into an ICA in South Carolina. Because TCS and AT&T are separate entities, TCS must obtain a separate interconnection agreement ("ICA") with BellSouth. TCS cannot use the same ICA as AT&T because TCS requires a separate operating code number for purposes of ordering, provisioning, and tracking costs. Although BellSouth recognizes that TCS is an affiliate of AT&T, BellSouth has been unwilling to allow TCS to use the AT&T ICA using a separate operating code number. BellSouth recently suggested that it may be willing to provide TCS a separate operating code number, but the parties have been unable to reach an agreement.

4. In my capacity at TCS, and on behalf of TCS, I have corresponded with representatives of BellSouth regarding TCS's request to opt-in to a BellSouth ICA. TCS has notified BellSouth repeatedly, via letters signed by me, that TCS wishes to adopt the BellSouth/AT&T ICA. These letters are described in further detail below. True and correct copies of these letters are attached as exhibits to this Affidavit. TCS received several reply letters from BellSouth, in which BellSouth denied TCS's request. These letters are also described below and are also attached as exhibits to this Affidavit.

5. BellSouth has refused to sign the Adoption Agreement, attached to this Affidavit as Exhibit 1.

6. On February 24, 2004 TCS sent a letter to BellSouth, signed by me. This letter notified BellSouth that TCS elected to take service pursuant to the entire terms and conditions of the existing Master Interconnection and Resale Agreement approved by the Public Service Commission of South Carolina effective December 21, 2001, between BellSouth and AT&T, for the remaining term of the BellSouth/AT&T Agreement. The BellSouth/AT&T Agreement terminates December 20, 2004. A true and correct copy of this letter is attached to this Affidavit as Exhibit 2.

7. At the time of TCS's request, AT&T and BellSouth were negotiating changes to the BellSouth/AT&T Agreement based on the Triennial Review Order ("TRO") released by the Federal Communications Commission ("FCC") on August 21, 2003. These negotiations do not affect the vitality of the opt-in provisions under Section 252(i) or the applicability of these provisions to TCS.

8. On March 8, 2004 BellSouth notified TCS that the BellSouth/AT&T Agreement was not available for adoption. BellSouth's stated reason was that the agreement TCS requested

“is not compliant with current law, and therefore, is not available for adoption.” A true and correct copy of BellSouth’s letter of March 8, signed by Nicole Bracy, Manager, Interconnection Services, is attached to this Affidavit as Exhibit 3.

9. On March 10, 2004 TCS responded to BellSouth’s denial of the opt-in request. TCS notified BellSouth that its position was unsupported by the Act or FCC rules, and was contrary to the purpose underlying the opt-in provisions in the Act. This letter was signed by me, and a true and correct copy of the letter is attached to this Affidavit as Exhibit 4.

10. On March 18, 2004 BellSouth again denied TCS’s opt-in request. BellSouth denied that it had refused to allow TCS to adopt the BellSouth/AT&T Agreement, but BellSouth advised TCS that the Agreement could not be adopted without replacing the Unbundled Network Element (UNE) Attachment with the BellSouth Standard UNE Attachment. BellSouth maintained that the BellSouth Standard UNE Attachment should be the operative agreement while negotiations regarding TRO-compliant language are ongoing. A true and correct copy of this letter, signed by Nicole Bracy, is attached to this Affidavit as Exhibit 5.

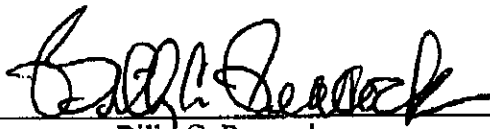
11. On March 29, 2004 TCS responded, advising BellSouth that its position was both unacceptable and potentially anti-competitive. In a spirit of compromise, TCS offered to condition the opt-in on an obligation to incorporate fully into the agreement the results of the ongoing TRO amendment negotiations. A true and correct copy of this letter, signed by me, is attached to this Affidavit as Exhibit 6.

12. On April 2, 2004, BellSouth refused to accept TCS’s compromise. Instead, BellSouth reiterated its refusal to allow TCS to opt-in to the existing, Commission-approved, BellSouth/ATT Agreement. A true and correct copy of this letter, signed by Nicole Bracy, is attached to this Affidavit as Exhibit 7.

13. BellSouth has offered no acceptable justification for its refusal of TCS's opt-in request.

FURTHER, THE AFFIANT SAITH NOT

DATE this 22nd day of July, 2004


Billy C. Peacock

Sworn to and subscribed before me
This 22nd day of July, 2004.


NOTARY PUBLIC

My Commission Expires 6/24/2008

Exhibit 1

Exhibit 1

Adoption Agreement

MASTER NETWORK INTERCONNECTION AND RESALE AGREEMENT

BETWEEN

BELLSOUTH TELECOMMUNICATIONS, INC.

AND

TC SYSTEMS, INC.

This Master Network Interconnection and Resale Agreement ("Agreement") between TC Systems, Inc. ("TCS") and BellSouth Telecommunications, Inc. ("BellSouth"), herein collectively, "the Parties", is entered into and effective this ____ day of _____, 2004 for the State of Louisiana.

NOW THEREFORE, the Parties agree as follows:

The Parties agree that the Agreement between the Parties shall consist of the Interconnection and Resale Agreement for the State of Louisiana entered into by and between BellSouth and AT&T Communications of the Southern States, LLC, dated October 8, 2003 (the "Adopted Agreement"), amended as follows:

1. TERM

- 1.1 This Agreement shall be in force for the period commencing with the date set forth above and continuing until the ____ of _____, or the effective date of a superceding interconnection and resale agreement which is either voluntarily agreed to by the Parties or results from an arbitration order between the parties issued by the Louisiana Public Service Commission ("Louisiana Commission"), whichever is earlier.

2. GENERAL

- 2.1 Other than as set forth above, the Adopted Agreement remains unchanged and in full force and effect. In the event of a conflict between the terms of this Agreement and the Adopted Agreement, this Agreement will control.
- 2.2 This Agreement executed by authorized representatives of BellSouth and TCS is made a part of and incorporates the terms and conditions of the Adopted Agreement.

3. NOTICES

- 3.1 Except as otherwise provided, all notices and other communication hereunder

shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, certified mail, postage paid, return receipt requested and addressed as follows:

To TCS: Mr. Bill Peacock
Director – Local Services & Access Management
AT&T
6304 Highway 5
Douglasville, GA 30135

To BellSouth:

4. PARTIES

TCS is hereby substituted in the Adopted Agreement for AT&T and BellSouth shall remain as the other Party to the Adopted Agreement. Except as modified above, the Agreement shall in all other respects reflect the same terms as the Adopted Agreement.

5. RESERVATION

The Parties acknowledge that TCS has made the election under Section 252(i) of the Act to enter into this Agreement in order to promptly serve local customers in BellSouth territory in Louisiana. Accordingly, TCS’s entering into this Agreement shall not be construed as acceptance of such rates, terms and conditions for any subsequent interconnection agreement. TCS hereby reserves the right, and shall not be construed to have waived its right, to fully negotiate and arbitrate an interconnection agreement with BellSouth in Louisiana, and elsewhere, which may include TCS advocating rates, terms and conditions that differ from those contained in this Agreement.

IN WITNESS WHEREOF, BellSouth and TCS have caused this Agreement to be executed by its duly authorized representatives.

“BellSouth”	BellSouth Telecommunications, Inc.	“TCS”	TC Systems, Inc.
By:	_____	By:	_____
Name (typed):	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

Exhibit 2

February 24, 2004

VIA ELECTRONIC AND U.S. MAIL

Nicole Bracy
BellSouth Telecommunications
675 W. Peachtree, Room 34S91
Atlanta, GA 30375

RE: ADOPTION –Master Interconnection and Resale Agreement between
BellSouth and MCI WorldCom Communications, Inc. effective May 7,
2002 for the state of Mississippi

Dear Nicole:

The purpose of this letter is to notify you that TCG Systems, Inc. ("TCG") elects to take service pursuant to the entire terms and conditions of the existing Master Interconnection and Resale Agreement approved by the Mississippi Public Service Commission effective May 7, 2002 between BellSouth Telecommunications, Inc. ("BellSouth"), and MCI WorldCom Communications, Inc. ("MCI") ("BellSouth/MCI Agreement") for the remaining term of the BellSouth/MCI Agreement for the state of Mississippi. That agreement terminates May 6, 2005. As you know, Section 252(i) of the Telecommunications Act of 1996 provides that BellSouth "shall make available any interconnection, service, or network element provided under an agreement approved under" the Act.

Thank you in advance for your cooperation. We look forward to working with you to complete the adoption agreement of the BellSouth/MCI Agreement for the state of Mississippi as soon as possible. Please feel free to call me on (678) 715-0289 if you have any questions.

Sincerely,

Original signed by Bill Peacock

Bill C. Peacock
Director – Local Services &
Access Management

Cc: Mark Brown, Esquire
Roberta Stevens

Exhibit 3

BellSouth Interconnection Services

675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX (404) 529-7839

Sent Via E-mail and U.S. Mail

March 8, 2004

Mr. Bill Peacock
Director -- Local Services &
Access Management
AT&T
6304 Highway 5
Douglasville, GA 30135

Re: ADOPTION –Master Interconnection and Resale Agreement between BellSouth and MCI
WorldCom Communications, Inc. effective May 7, 2002 for the state of Mississippi

Dear Bill:

This is in response to your letter dated February 24, 2004. BellSouth acknowledges receipt of TCG Systems, Inc.'s (TCG) request to adopt the existing Interconnection Agreement between BellSouth and MCI for the state of Mississippi. BellSouth would, ordinarily, not be opposed to this adoption, however, at this time, the Interconnection Agreement that TCG has requested to adopt is not compliant with current law, and therefore, is not available for adoption.

As you are aware, the recent Federal Communications Commission's (FCC) Triennial Review Order (TRO) significantly modified BellSouth's obligations under the Act. Pursuant to the Modification of Agreement clause in Section 6 of the General Terms and Conditions of the Interconnection Agreement, BellSouth and MCI are in the process of negotiating new provisions. Hence, the requested Interconnection Agreement is not compliant with current law. However, TCG has the option of (1) negotiating from the BellSouth Standard Interconnection Agreement, (2) adopting another CLEC's Interconnection Agreement that is compliant with current law, or (3) adopting a CLEC's Interconnection Agreement, replacing the Unbundled Network Element (UNE) Attachment with the BellSouth Standard UNE Attachment. In the event that TCG adopts the BellSouth standard UNE Attachment, the Parties will continue to negotiate the adopted language in a mutually acceptable manner.

Pursuant to your request, the 135-day window for negotiations began on February 25, 2004. Please let me know how TCG wishes to proceed.

Sincerely,

Original signed by Nicole Bracy

Nicole Bracy
Manager, Interconnection Services

Exhibit 4



Bill C. Peacock

Director – Local Services & Access Management

6304 Hwy 5

Douglasville, Georgia 30135

Tel. No. 678-715-0289

Fax No. 281-664-4382

SENT VIA ELECTRONIC AND US MAIL

March 10, 2004

Ms. Nicole Bracy
Manger – Interconnection Services
BellSouth Interconnection Services
675 W. Peachtree Street, N.E.
34S91
Atlanta, GA 30375

RE: ADOPTION – Master Interconnection and resale Agreement between BellSouth and MCI WorldCom Communications, Inc. effective May 7, 2002 for the State of Mississippi

Dear Nicole:

This letter is in response to your correspondence dated March 8, 2004 regarding the request by TC Systems, Inc. (TCS) (referred to as TCG Systems, Inc. in your correspondence) to adopt the existing MCI WorldCom Interconnection Agreement for the state of Mississippi ("MCI Agreement"). In your response, BellSouth takes the position that while it ordinarily would not be opposed to TCS's request, in this instance BellSouth refuses to comply because in BellSouth's view the "Interconnection Agreement that TCS has requested to adopt is not compliant with current law, and therefore is not available for adoption." BellSouth's refusal is wholly unsupported by current law and, to the extent BellSouth maintains its position in this regard, constitutes an unlawful and discriminatory barrier to entry for TCS service offerings in the State of Mississippi.

The existence of ongoing TRO-amendment negotiations between MCI and BellSouth does not obviate BellSouth's obligation under federal law to promptly make available to TCS or any other requesting CLEC the terms and conditions contained in the MCI Agreement duly approved by the Mississippi Public Service Commission. Federal requirements are straightforward. Section 252(i) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), mandates that:

A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved by this section to which it is a party to any other requesting carrier upon the same terms and conditions as those provided in the agreement.

Similarly, the FCC has codified this requirement in Section 51.809(a) of its rules:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement.

Accordingly, BellSouth's attempt to unilaterally place conditions on its obligation to permit TCS to adopt a current interconnection agreement pursuant to Section 252(i) is contrary to both the Act and FCC rules. There is no support within the Act for any attempt by BellSouth to make negotiation of TRO amendment language a condition precedent to granting TCS's opt-in request. Rather, after fulfilling its obligation to allow TCS adoption of the identified agreement, BellSouth properly may request that TCS, consistent with the terms of the MCI agreement, negotiate TRO amendment language as necessary. Any other approach not only violates the clear language of the above-cited federal legal requirements, but also is contrary to the purpose underlying the "opt-in" provisions of Section 252(i) – to prevent discrimination by an RBOC against its competitors, or granting favor to one market entrant over another.

TCS notes that BellSouth's actions in this regard are customer-affecting in nature, and will undermine TCS's ability to offer new services in Mississippi "without unreasonable delay," in accordance with the requirements of the Act. Moreover, the "options" proffered by BellSouth, which include offers to only allow TCS's immediate adoption of approved CLEC contracts that, in BellSouth's unilateral opinion, are "compliant" with current law, underscore the discriminatory nature of BellSouth's position.

Given the time-sensitive and customer-affecting nature of this situation, TCS requests that BellSouth provide a response to this letter by March 16, 2004. Absent immediate resolution of this issue, TCS will be forced to take all necessary action to compel BellSouth's compliance with its "opt-in" obligations under federal law.

Sincerely,

Original signed by Bill C. Peacock

Bill Peacock

Cc: Mark E. Brown, Esquire
Roberta Stevens

Exhibit 5

BellSouth Interconnection Services

675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX (404) 529-7839

Sent Via E-mail and U.S. Mail

March 18, 2004

Mr. Bill Peacock
Director – Local Services &
Access Management
AT&T
6304 Highway 5
Douglasville, GA 30135

Re: ADOPTION –Master Interconnection and Resale Agreement between BellSouth and MCI WorldCom Communications, Inc. effective May 7, 2002 for the State of Mississippi

Dear Bill:

This is in response to your letter dated March 10, 2004, regarding TC Systems, Inc.'s (TCS) request to adopt the existing MCI WorldCom Communications, Inc. Interconnection Agreement (MCI Agreement) for the state of Mississippi. BellSouth denies that it has refused to allow TCS the ability to adopt MCI's existing Agreement. BellSouth advised TCS that the MCI Agreement was not compliant with current law, but could be adopted by replacing the Unbundled Network Element (UNE) Attachment with the BellSouth Standard UNE Attachment, while continuing to negotiate the current changes in law. BellSouth also offered TCS the options to negotiate from the BellSouth Standard Interconnection Agreement or adopt another CLEC's Interconnection Agreement that is currently compliant with law.

You are correct in your statement that the Mississippi Public Service Commission approved the existing MCI Agreement. However, the change of law clause in the Agreement grants either party the right to initiate negotiations due to a legal action that materially affects any term of the Agreement. Thus, the outcome of the Federal Communications Commission's (FCC) Triennial Review Order (TRO) significantly modified BellSouth's obligations under the Act, as well as the more recent D.C. Circuit Court of Appeals' ruling. Therefore, it is BellSouth's position that because the terms in the UNE Attachment were almost completely overhauled due to the changes in law, it is reasonable, in an adoption request, for the UNE Attachment to be replaced while continuing negotiations.

For the reasons stated above, BellSouth disagrees that its position is unlawful, "customer-affecting," and causes an unreasonable delay of TCS' ability to provide service in Mississippi. Furthermore, BellSouth's position rests upon, rather than defies, its nondiscrimination obligations. Finally, it is not BellSouth's "unilateral opinion" that determines whether or not an executed Agreement is compliant with current law. Once an agreement or an amendment containing current changes in law has been executed between BellSouth and a CLEC, it is a mutually agreed upon contract decided by both parties.

By negotiating one of the previously mentioned options, TCS has the ability to begin offering services in Mississippi within a reasonable time period. In order to prevent further delay, please advise as to how TCS wishes to proceed.

Sincerely,

Original signed by Nicole Bracy

Nicole Bracy
Manager, Interconnection Services

Exhibit 6



Bill C. Peacock

Director – Local Services & Access Management

6304 Hwy 5

Douglasville, Georgia 30135

Tel. No. 678-715-0289

Fax No. 281-664-4382

SENT VIA ELECTRONIC AND US MAIL

March 29, 2004

Ms. Nicole Bracy
Manger – Interconnection Services
BellSouth Interconnection Services
675 W. Peachtree Street, N.E.
34S91
Atlanta, GA 30375

RE: ADOPTION – Master Interconnection and resale Agreement between BellSouth and MCI WorldCom Communications, Inc. effective May 7, 2002 for the state of Mississippi

Dear Nicole:

This letter is in response to your correspondence dated March 18, 2004 regarding the request by TC Systems, Inc. (TCS) (referred to as TCG Systems, Inc. in your correspondence) to adopt the existing MCI WorldCom Interconnection Agreement for the state of Mississippi (“MCI Agreement”).

In your response, “BellSouth denies that it has refused to allow TCS the ability to adopt MCI’s existing agreement,” while simultaneously seeking to unilaterally impose conditions on TCS’s ability to do so. BellSouth contends that the “change in law clause in the Agreement grants either party the right to initiate negotiations due to a legal action that materially affects any term of the Agreement.” Assuming, *arguendo*, that a change of law is triggered by the proposed opt-in, this does not relieve BellSouth of its obligation to allow TCS to opt-in to the existing MCI agreement; any obligation to conform the agreement to current law arises from the opt-in process itself, and necessarily should occur in negotiations after the opt-in has occurred. There is no justification for, as BellSouth proposes, modifying the Commission-approved ICA Agreement, replacing major attachments or otherwise limiting TCS’s ability to opt-into the Agreement.

BellSouth’s unsupported position regarding TCS’s ability to adopt the MCI Agreement in its entirety will retard TCS’s ability to roll out products in the state of Mississippi.

In the spirit of compromise, TCS agrees that its proposed opt-in to AT&T’s existing contract in Mississippi would be conditioned upon an obligation of both parties to incorporate fully into the Agreement the results of its ongoing TRO amendment

negotiations. We believe that this approach is consistent with BellSouth's desire to ensure that the agreement reflects current law while not inappropriately limiting TCS' ability to offer services in the Mississippi market.

Again, given the time-sensitive and customer-affecting nature of this situation, TCS requests that BellSouth provide a response to this letter by April 1, 2004. TCS remains hopeful that it will not be forced to take additional action to compel BellSouth's compliance with its "opt-in" obligations under federal law.

Sincerely,

Original signed by Bill C. Peacock

Bill C. Peacock

Cc: Mark E. Brown
Roberta Stevens

Exhibit 7

BellSouth Interconnection Services

675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX (404) 529-7839

Sent Via E-mail and U.S. Mail

April 2, 2004

Mr. Bill Peacock
Director – Local Services &
Access Management
AT&T
6304 Highway 5
Douglasville, GA 30135

Re: ADOPTION –Master Interconnection and Resale Agreement between BellSouth and MCI WorldCom Communications, Inc. effective May 7, 2002 for the state of Mississippi

Dear Bill:

This is in response to your letter dated March 29, 2004, regarding TC Systems, Inc.'s (TCS) request for adoption of the MCI WorldCom Communications, Inc. Interconnection Agreement (MCI's Agreement) for the state of Mississippi. As stated in my previous letters dated March 8, 2004 and March 18, 2004, the Interconnection Agreement that TCS has requested to adopt is not compliant with current law, and therefore, is not available for adoption.

However, BellSouth has offered TCS the following options in an effort to satisfy TCS' ability to roll out products in the state of Mississippi: (1) negotiate from the BellSouth Standard Interconnection Agreement; (2) adopt another CLEC's Interconnection Agreement that is compliant with current law; or (3) adopt MCI's Agreement or another CLEC's Interconnection Agreement, replacing the Unbundled Network Element (UNE) Attachment with the BellSouth Standard UNE Attachment. BellSouth has also agreed to continue to negotiate the adopted language in a mutually acceptable manner. BellSouth believes these are reasonable options considering the nature of the events that have occurred in the past several months.

If you have any questions, please give me a call at 404.927.7596.

Sincerely,

Original signed by Nicole Bracy

Nicole Bracy
Manager, Interconnection Services

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

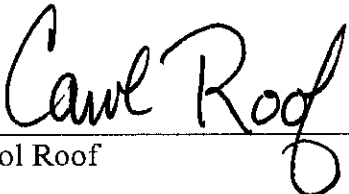
In the matter of
Complaint of TC Systems, Inc. against)
BellSouth Telecommunications, Inc.)
for Failure to Comply with) DOCKET NO. 2004-118-C
47 U.S.C. § 252(i), Petition for)
Approval of § 252(i) Adoption of Existing)
Interconnection Agreement, and Request)
for Expedited Proceeding

This is to certify that I have caused to be served this day, one (1) copy of the **TC Systems, Inc.'s Motion for Summary Judgment and Memorandum in Support of Summary Judgment** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
PO Box 752
Columbia SC 29202-0752

David Butler, Esquire
South Carolina
Public Service Commission
PO Drawer 11649
Columbia, SC 29211



Carol Roof

July 22, 2004
Columbia, South Carolina